

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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JOHN WAITE, an individual; KASIM SULTON, an individual; SUSAN STRAW HARRIS p/k/a SYD STRAW, an individual; LEONARD GRAVES PHILLIPS, an individual, STAN SOBOL a/k/a STAN LEE, an individual, STEVE WYNN, an individual, DENNIS MEHAFFEY p/k/a DENNIS DUCK, an individual; and DAVID PELLISH p/k/a DAVE PROVOST, an individual; and on behalf of all others similarly situated, : No. 1:19-cv-01091(LAK)
Plaintiffs, :
v. :
UMG RECORDINGS, INC.; CAPITOL RECORDS, LLC; and DOES 1 through 10, :
Defendants. :
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DEFENDANT AND COUNTERCLAIM PLAINTIFF CAPITOL RECORDS, LLC'S NOTICE OF MOTION FOR SUMMARY JUDGMENT AS TO ITS COUNTERCLAIMS FOR DIRECT AND VICARIOUS COPYRIGHT INFRINGEMENT AGAINST PLAINTIFF AND COUNTERCLAIM DEFENDANT SUSAN STRAW HARRIS

PLEASE TAKE NOTICE that upon the concurrently filed Memorandum of Law; Statement of Undisputed Material Facts; the Declaration of Alasdair McMullan; the Declaration of Rollin A. Ransom and the exhibits attached thereto; and upon all prior pleadings, submissions, and proceedings herein, Defendant and Counterclaim Plaintiff Capitol Records, LLC ("Capitol") hereby moves this Court before the Honorable Lewis A. Kaplan, United States District Court Judge, Southern District of New York, at the Daniel Patrick Moynihan United States Courthouse located at 500 Pearl Street, New York, NY 10007, pursuant to Rule 56(a) for an order granting summary judgment in Capitol's favor on its First Counterclaim for direct copyright infringement

and its Second Counterclaim for vicarious copyright infringement against Plaintiff and Counterclaim Defendant Susan Straw Harris p/k/a Syd Straw (“Straw”), including a finding that Straw’s infringement was willful, and for such other and further relief as the Court may deem just and proper. The Motion is made upon the following grounds:

First, there is no genuine dispute of material fact that Straw directly infringed Capitol’s ownership rights in the album *Surprise*. Straw unequivocally admits that she offered the album for sale, reproduction, and distribution online, and that she never obtained Capitol’s permission to do so.

Second, there is no genuine dispute of material fact that Straw vicariously infringed Capitol’s ownership rights in the album *Surprise*. She admits that she authorized third party Bandcamp, Inc. to reproduce and distribute the album through its website Bandcamp.com, and that she received payments from Bandcamp in connection with the sale of *Surprise* such that she had a direct financial interest in the unauthorized exploitation.

Third, there is no genuine dispute of material fact that Straw’s infringement was willful. Straw has always known that she did not own the rights to exploit *Surprise* because her recording contract expressly states so and her own putative termination claim under Section 203 of the Copyright Act expressly contemplates that Capitol is the owner of *Surprise* until at least 2024, but she nonetheless began offering the album for sale online at least as early as 2015. Straw also continued to offer *Surprise* for sale even after Capitol expressly informed her of its rights and advised her not to attempt to exploit the album.

Fourth, Straw cannot establish any of her affirmative defenses to Capitol’s counterclaim, all of which fail as a matter of law or on the record. Capitol’s counterclaims are timely, Straw cannot establish that Capitol acceded to her conduct, Straw personally and actively participated in infringing Capitol’s rights, and Capitol is not required to prove damages to prevail on its infringement claims. Capitol is thus entitled to summary judgment on its infringement claims, including a finding of willful infringement.

Dated: April 15, 2022

SIDLEY AUSTIN LLP

By: /s/ Ariel Atlas
Ariel Atlas
aatlas@sidley.com
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, NY 10019
Telephone: (212) 839-5300
Facsimile: (212) 839-5599

Rollin A. Ransom
rransom@sidley.com
Lisa M. Gilford
lgilford@sidley.com
Lauren M. De Lilly
ldelilly@sidley.com
SIDLEY AUSTIN LLP
555 West 5th Street, Suite 4000
Los Angeles, CA 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

Richard S. Mandel
rsm@cll.com
Thomas Kjellberg
txk@cll.com
COWAN, LIEBOWITZ & LATMAN, P.C.
114 West 47th Street
New York, NY 10036-1525
Telephone: (212) 790-9200
Facsimile: (212) 575-0671

*Attorneys for Defendants UMG Recordings, Inc.
and Capitol Records, LLC*